

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KAREEM DAMOE LEE, *aka* “Boo,”

Defendant.

No. CR04-4105-MWB

**REPORT AND
RECOMMENDATION ON MOTION
TO DISMISS,
AND ORDER ON MOTION TO
AMEND INDICTMENT**

The defendant Kareem Damoe Lee has filed a one-page motion (Doc. No. 18) to dismiss the “purported charging document” on two grounds. First, he argues the document does not indicate it was “made with the concurrence of 12 grand jurors.” (Doc. No. 18, citing Fed. R. Crim. P. 6(f)). Second, he argues the document is not entitled “Indictment,” making it defective as a charging document. (*Id.*, citing Fed. R. Crim. P. 7(c)). The defendant failed to file a brief in support of his motion, as required by Local Rule 7.1(d). See L. Cr. R. 47.1.

Addressing the second issue raised by the defendant, the plaintiff (the “Government”) filed, on January 25, 2005, a motion (Doc. No. 22) to amend the charging document (Doc. No. 1) to add the word “Indictment” as a title, and to correct the spelling of the defendant’s name. The defendant has not filed a timely resistance to the motion. Regarding the spelling of the defendant’s name, the court granted the Government’s oral

motion to correct the Indictment in that regard at the initial appearance and arraignment on December 15, 2004. (See Doc. No. 4) Pursuant to the court's order, the Clerk of Court corrected the docket to show the correct spelling of the defendant's name, as set forth above in the caption of this order. Therefore, the Government's motion to amend the Indictment on that basis is **denied as moot**.

For good cause shown, the Government's motion to amend the document to add the title "Indictment" is **granted**. **By February 14, 2005**, the Government is directed to file an amended Indictment that includes the title "Indictment," and corrects the spelling of the defendant's name.

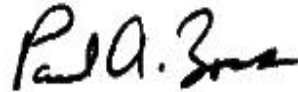
The court turns now to the defendant's argument that the Indictment should be dismissed because it fails to "provide whether the charge was made with the concurrence of 12 grand jurors." As the Government notes in its resistance (Doc. No. 23), Federal Rule of Criminal Procedure 6(c) provides that the voting record of the grand jury must not be made public absent court order. The defendant here has shown no cause for an examination of the voting record in this case. Furthermore, the undersigned accepted the return of the Indictment in this case, and verified both at that time, and again upon receipt of the defendant's motion, that twelve or more grand jurors concurred in finding the Indictment. (See Doc. No. 2, Warrant, issued concurrently with acceptance of the return, and signed by the undersigned.) Such a verification is the only relief to which the defendant is entitled. *See United States v. Deffenbaugh*, 957 F.2d 749, 757 (10th Cir. 1992).

For these reasons, **IT IS RESPECTFULLY RECOMMENDED** that the defendant's motion to dismiss the Indictment be **denied**.

Any party who objects to this report and recommendation must serve and file specific, written objections by **February 16, 2005**. Any response to the objections must be served and filed by **February 21, 2005**.

IT IS SO ORDERED.

DATED this 9th day of February, 2005

A handwritten signature in black ink, appearing to read "Paul A. Zoss", is written above a horizontal line.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT